BORA LASKIN LAW LIBRARY
3 1761 10083826 7

SECURITIES REGULATION
MATERIALS AND CASES

J. GORDON COLEMAN, Q.C.

1980-1981

Volume 2

CHAPTERS FOUR TO SIX

FACULTY OF LAW, UNIVERSITY OF TORONTO

Store.
KF
1069
C6
1980
v.2

LAW LIBRARY
NOV 2 8 1980
FACULTY OF LAW
UNIVERSITY OF TORONTO

SECURITIES REGULATION

MATERIALS AND CASES

J. GORDON COLEMAN, Q.C.

1980-1981

Volume 2

CHAPTERS FOUR TO SIX

FACULTY OF LAW, UNIVERSITY OF TORONTO

KF
1069
.C6
1980
v.2

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/securitiesregula02cole_2

SECURITIES REGULATION - MATERIALS AND CASES

1980 - 1981

J. GORDON COLEMAN, Q.C.

I N D E X

	Page
Preface	xiii
Some Prefatory Readings	xvi
CHAPTER ONE - CORPORATE FINANCE: BACKGROUND	
(a) Sullivan: Methods of Long-Term Corporate Financing (1980)	1-1
(b) Coleman: Settling the Attributes of Debt Securities: Financial and Legal Considerations (1975)	1-20
CHAPTER TWO - THE STATUTORY SCHEME: BACKGROUND AND DEVELOPMENTS	
(a) Coleman: The Public Corporation (1979)	2-1
(b) Bray: Ontario's Proposed Securities Act: An Overview - Its Purpose and Policy Premises (1975)	2-18
(c) Cohen: "Truth in Securities" Revisited (1966)	2-54
(d) Summary of Highlights of the Merger Study (1970)	2-83
(e) A comment on the Merger Study (1971)	2-93
(f) Review of The SEC and Corporate Disclosure: Regulation in Search of a Purpose, 93 Harv. L. Rev. 1595 (1980)	2-100
(g) Kripke: The SEC, The Accountants, Some Myths and Some Realities (1970)	2-107
(h) Kripke: The Myth of the Informed Layman (1973)	2-115
(i) Benson: An Economist's Viewpoint: Required Disclosure and the Stock	

		Page
	Market: An Evaluation of the Securities Exchange Act of 1934 (1973)	2-120
(j)	The Proposed Securities Act - An Overview	2-122
(k)	Crawford: Timely Disclosure, Trading on the Basis of Material, Non Public Information and the Legislating of Generally Accepted Accounting Principles (1980)	2-159
(l)	Coleman: Prospectus Preparation, Audit Committees and Advice to Potential Targets (1980)	2-180
(m)	In the matter of Denison Mines Limited (1980) OSC Bulletin 238	2-240
	CHAPTER THREE - TAKE-OVER BIDS: THE RULES AND HOW THEY WORK	
(a)	Excerpt from the Kimber Report	3-1
(b)	Excerpt from the Merger Study	3-9
(c)	Excerpt from the Select Committee Merger Report	3-11
(d)	Extract from the London City Code on Take-Overs	3-33
(e)	Troubh: Purchased Affection: A Primer on Cash Tender Offers (1976)	3-50
	Hayes & Taussig: Tactics of Cash Take-Over Bids	3-63
(f)	Selected Articles on Take-Overs Generally	3-77
(g)	Material in Connection with the Thomson Offer for The Bay:	
	(i) Offer and Take-Over Bid Circular	3-92

		Page
	(ii) Letters of Transmittal	3-108
(h)	Bay Directors' Circular	3-112
(i)	Article on the Weston Bid for The Bay	3-122
(j)	March 31, 1979 Amendment of the Thomson Offer	3-124
(k)	Extract from the Weston Offer for The Bay	3-126
(l)	Selected Articles relating to the Thomson-Weston-Bay Transactions	3-128
(m)	Weston April 6, 1979 Amendment of its Offer	3-132
(n)	Material Describing the Escrow Agreement proposed by Weston Plus a Copy of the Escrow Agreement	3-136
(o)	OSC Decision (April 8, 1979) concerning the Escrow Arangements Proposed by Weston	3-142
(p)	Thomson April 9, 1979 Amendment of Its Offer	3-151
(q)	April 12, 1979 Newspaper Ad Announcing that The Bay Directors Recommended the Amended Thomson Offer and that Weston Recommended that The Bay Shareholders Tender under that Offer	3-153
(r)	A Discussion of the Thomson-Weston-Bay Transactions in the Context of Whether the Existing Rules Work Plus a Newspaper Article discussing amendments subsequently proposed to The Securities Act, 1978	3-154
(s)	Selected Newspaper Articles relating to the Edper-Brascan-Woolworth Transaction	3-171
(t)	OSC Decision on Edper's Application for an Exemption from the Take-Over Bid Rules	3-177

		Page
(u)	Newspaper Article relating to the Legal Battle Lines	3-194
(v)	Extract from a Writ filed by Certain Brascan Shareholders against the Brascan Directors	3-195
(w)	Regulations under The Securities Act (Ontario) Passed as a Result of Edper's Purchase of the Brascan Shares on the American Stock Exchange	3-196
(x)	Newspaper Article relating to Edper's Suit Against Brascan	3-199
(y)	Reasons for Judgment Issued in Brascan's New York Action against Edper	3-200
(z)	Extract from Transcript in the Brascan-Edper New York Action relating, *inter alia*, to Whether the Injunction should be Re-instated Pending an Appeal	3-261
(aa)	Selected Newspaper Articles Appearing after the New York Court Decision Referred to above	3-306
(bb)	Extract from Business Week dated March 17, 1980: "The SEC redefines tender offers"	3-308.1
(cc)	Extract from the T.S.E. By-laws relating to Stock Exchange Take-Over Bids	3-309
(dd)	Material relating to Edper's Stock Exchange Take-Over Bid for up to 5 Million Class A Ordinary Shares of Brascan and related Materials	3-313
(ee)	Newspaper Article Describing the Outcome of the Edper Bid	3-330
(ff)	T.S.E. Notice 1999 (November, 1979)	3-332

CHAPTER FOUR - SALE OF CONTROL OF A CORPORATION: WHO GETS THE PREMIUM?

(a)	*In the Matter of Consolidated Manitoba Mines Limited and Great Basin Metal Mines Limited* (1966)	4-1

		Page
(b)	Gibson: The Sale of Control in Canadian Company Law (1975)	4-5
(c)	OSC Request for Comments relating to Exemptions from the Obligation to Make a Follow-up Offer pursuant to Section 91(1)	4-19
(d)	Extract from Economic Analysis of Law	4-40
(e)	Globe & Mail Articles relating to the OSC Decision regarding Ronalds-Federated Follow-Up Offer	4-42
(f)	In the matter of Ronalds Federated Limited and Newsco Investments Limited (OSC June 1980 decision yet to be reported)	4-44

CHAPTER FIVE - ISSUER BIDS; INSIDER BIDS AND SQUEEZE-OUTS

(a)	The Fiduciary Duty Owed by the Majority to the Minority	5-1
(b)	Toromont Industries Ltd. Offer to the Holders of its Outstanding Common Shares to Purchase 1,700,000 Shares at a Price of $2.75 per Share	5-6
(c)	Newspaper Articles regarding Toromont's Offer	5-15
(d)	Toromont's Letter to the Shareholders	5-20
(e)	OSC Policy 3-37 relating to Issuer Bids	5-24
(f)	Exemptions from the Issuer Bid Policy	5-28
(g)	OSC Notice - Disclosure Standards on Insider Bids	5-29
(h)	OSC Comment (July 1978) on "Going Private" Transactions including Appendix I which is a Supplement to OSC Policy 3-37	5-31
(i)	Reasons for Judgment in the Maple Leaf Mills Case	5-48
(j)	Reasons for Judgment in the Westeel-Rosco Case	5-63

	Page
(k) OSC Decision in the Loeb-Provigo Case	5-87
(l) OSC Interpretation of Policy 3-37 (October 1978)	5-103
(m) KeepRite Issuer Bid through the facilities of the T.S.E.	5-108
(n) OSC Ruling on a Torstar Application (April 1979)	5-110
CHAPTER SIX - THE DISTRIBUTION PROCESS: PREPARATION OF PROSPECTUSES AND THE ROLE OF THE ISSUER, ITS DIRECTORS, THE UNDERWRITER AND COUNSEL	
(a) Notice during the Waiting Period re Proposed Offering of Bell Canada Preferred Shares	6-1
(b) Uniform Policy 2-13 (Advertising during the Waiting Period)	6-2
(c) Underwriting Agreement in connection with the Series C Debentures of Reed Ltd.	6-4
(d) Banking Group Agreement in connection with the Reed Financing	6-14
(e) Selling Group Agreement in connection with the Reed Financing	6-18
(f) Distribution Certificate relating to the Reed Financing	6-22
(g) Instructions with respect to Delivery of Series C Debentures of Reed ltd. at Various Delivery Points	6-23
(h) "Tombstone" Advertisement in connection with the Reed Financing	6-24
(i) Opinion Furnished by the Underwriter's Counsel in connection with the Reed Financing	6-25

		Page
(j)	In the Matter of A.E. Ames & Co. Limited (1972)	6-32
(k)	LeMesurier: The Function of the Underwriter (1972)	6-52
(l)	United States v. Morgan, 118 F. Supp. 621 (1953, S.D.N.Y.)	6-59
(m)	Escott v. BarChris Construction Corporation, 283 F. Supp. 643 (1968, S.D.N.Y.)	6-73
(n)	What the BarChris Directors Did (Not Enough) Fortune, 1969	6-102
(o)	Whitney: Underwriters' Counsel - Advice to my Client (1969)	6-104
(p)	Fleischer: New Standards for New Issues (1975)	6-110
(q)	Globus v. Law Research Service, (SDNY, 1968)	6-111
(r)	Globus v. Law Research Service, (2nd. Cir. CA, 1969)	6-116
(s)	Lanza v. Drexel & Co., 479 F. 2d 1277 (2d Cir. 1973) (en banc)	6-117
(t)	Feit v. Leasco Data Processing Equipment Corp., 322 F. Supp. 544 (E.D.N.Y. 1971)	6-140
(u)	Vrignon: Scylla and Charybdis: A Consideration of Certain Inconsistencies in Federal Securities Regulation (1977)	6-143
(v)	Materiality: What is the Test?	6-167
(w)	TSC Industries, Inc., et al, v. Northway, Inc. 96 S.Ct. 2126 (1976)	6-169
(x)	Ratner: Standards of Materiality Applied to Different Kinds of Information (1977)	6-179

	Page
(y) The Role of Lawyers in Securities Transactions	6-184
(z) Inco Prospectus relating to an Issue of Preferred Shares	6-209
(aa) How things have changed: A 1913 Prospectus relating to Preference Shares of Brascan (or Brazilian Traction, Light and Power Company, Limited as it then was)	6-259
(bb) Beck: The Role and Responsibilities of the Lawyer in the Securities Law Context (1980)	6-263
CHAPTER SEVEN - REGULATION OF REGISTRATION AND SOME KEY DEFINITIONS	
(a) A Note on Registration under The Securities Act	7-1
(b) Regina v. McKillop [1972] 1 O.R. 164	7-4
(c) Re Ontario Securities Commissio and C.A.P. Ltd. [1972] 1 O.R. 205	7-9
(d) Re Pacific Coast Coin Exchange of Canada Ltd. et al and Ontario Securities Commission (1977) 2 B.L.R. 212 (SCC)	7-11
(e) In the Matter of International Technology Transfer Limited Carrying on Business under the Name of Raymond Lee Organization of Canada (OSC Bulletin, June 1978)	7-24
(f) Commercial Discount Corporation v. Lincoln First Commercial Corporation, et al (U.S. Dist. Ct. S.D.N.Y. February 16, 1978)	7-33
(g) In the Matter of Shelter Corporation of Canada Limited and in the Matter of Section 59 of The Securities Act (OSC Bulletin, January, 1977)	7-37

		Page
(h)	United Housing Foundation, Inc. v. Forman, [95 S. Ct. (1975) (U.S. Sup. Ct.)]	7-46
(i)	In the Matter of London Commodity Options (OSC Bulletin, April, 1977)	7-57
(j)	Securities & Exchange Commission v. Ralston Purina Co. 345 U.S. 119, (1953)	7-70
(k)	Regina v. Piepgrass 23 D.L.R. (2d) 220 (1960)	7-74
(l)	Recent OSC Policy Statements in connection with Private Placements	7-83
(m)	Jewett: Securities Regulation of Distributions of Interests in Tax Shelter Vehicles in Canada (1980)	7-87
(n)	Chapman: The Securities Act, 1978 and the Occasional Practitioner: the Private Company Exemption is not for the Meek (1980)	7-141
(o)	Consolidated Marbenor Mines Limited et al (1979) OSC Bulletin 379	7-188

CHAPTER EIGHT - LIABILITIES AND OFFENCES

(a)	Gower: Civil Liabilities in Securities Transactions in England	8-1
(b)	Beck: Case Comment on Ames v. Investo-Plan Ltd. (1974)	8-17
(c)	SEC Pre-trial Brief in SEC v. National Student Marketing Corp., et al ("NSMC")	8-26
(d)	Summary of Pre-trial Brief of One of the Defendant Law Firms in NSMC	8-29

		Page
(e)	Baillie: Discovery-type Procedures in Security Fraud Prosecutions	8-33
(f)	R. v. De Berenger and Others 3 M. & S. 67; 105 E.R. 536	8-48
(g)	Selected Sections from the Criminal Code	8-52
(h)	Cox and Paton v. The Queen (Canada Criminal Cases 1963 Vol. 2)	8-54
(i)	Regina v. Hargrave and Smith	8-61
(j)	Material relating to the Manus Libel Trial	8-81

CHAPTER NINE - INSIDERS

(a)	Some Preliminary Views	9-1
(b)	Excerpt from the Kimber Report	9-2
(c)	SEC v. Texas Gulf Sulphur Co. 401 F. 2d. 483 (1968)	9-12
(d)	Johnston: Case Comment on Green v. Charterhouse (1973)	9-34
(e)	Green v. Charterhouse, 12 O.R. (2d) 280 (1976)	9-48
(f)	In the Matter of Harold P. Connor et al (The National Sea Case) - OSC Bulletin 149 (1976)	9-80
(g)	Gillis: Mandatory Use of Inside Information (1975)	9-113
(h)	Extract from OSC Weekly Summary (Week Ending April 18, 1980)	9-117
(i)	Extract from Wall Street Journal, March 19, 1980	9-118
(j)	Extract from New York Times, March 7, 1980	9-119

		Page
CHAPTER TEN - DISCLOSURE TO SHAREHOLDERS		
(a)	Excerpt from the Kimber Report	10-1
(b)	Notice, Information Circular and Proxy - Thomson Newspapers Limited	10-10
(c)	Amalgamations - Information to be Provided to Shareholders	10-14
(d)	Extract from Amalgamated Bonanza Petroleum Ltd. Information Circular	10-17
(e)	Re: Niagara Wire Weaving Co. Ltd. [1971] 3 O.R. 633	10-36
(f)	Disclosure of Corporate Information, Extract from the Report of the Royal Commission on Corporate Concentration	10-42
(g)	Timely Disclosure: Uniform Act Policy 2-12	10-68
(h)	Administration: Timely Disclosure, Uniform Act Policy 2-12, (OSC Policy 3-23)	10-69
(i)	Annual Meeting Material Sent by Brascan to its Shareholders Following Settlement of its Various Legal Proceedings with Edper	10-70
(j)	Notice to Shareholders of United Canso Oil & Gas Ltd. published in the Globe & Mail, June 10, 1980	10-78
(k)	United Canso Oil & Gas Ltd. - follow-up article in Globe & Mail, June 11, 1980	10-82
CHAPTER ELEVEN - REGULATION OF THE T.S.E. AND THE ONTARIO RULES RE NON-RESIDENT PARTICIPATION IN THE SECURITIES INDUSTRY		
(a)	Fixed v. Negotiable Commissions: The October 1976 Decision of the OSC	11-1

	Page
(b) Change of Control of a Non-Resident Dealer: In the Matter of Baker, Weeks of Canada Limited, (1977)	11-34
(c) In the Matter of an Application by Reynolds Securities (Canada) Ltd. under Section 6d (3), reg. 794 (1978)	11-55